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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1864 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No

5. Whether it is to be circulated to the Civil Judge? No :

PRAGJI RAMJI VANZA

Versus

CHANDRAVADAN MANEKLAL BHATT

Appearance:

MR RA MISHRA for Petitioners

MRS MC THAKKER for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 11/02/2000

ORAL JUDGEMENT

1. This is tenant's revision under Section 29(2) of the Bombay Rent Act against the concurrent Judgments and Decrees of the two Courts below.

2. List has been revised four time, but neither learned Counsel for the revisionist nor the learned Counsel for the respondents appeared. As such the Judgment of the two Courts below have been examined. The revision can be decided by the Court even from the material on record, no matter the parties to the revision are absent. It is, therefore, proposed to decide this revision on merit.

3. Brief facts giving rise to this revision are as under :

The defendants - revisionists were tenants of the disputed accommodation on Rs.7/- p.m. from the previous owner - landlord. The present respondent purchased the property through a registered Sale Deed Ex.25 from the previous owner - landlord Chimanlal Patni. Thereafter notice of attornment was given. The revisionists were in arrears of rent for 36 months from January, 1974 to December, 1976 amounting to Rs.252/-. Notice under Sec. 12(2) of the Rent Act was served on the revisionists. According to the respondent the revisionists paid six months rent from June 1973 to December 1973 and thereafter no rent was paid. Consequently the Suit for eviction of revisionists was filed on the ground of failure of the revisionists to pay rent. It was obviously a Suit for eviction and recovery of arrears of rent under Sec. 12(3)(a) of the Rent Act.

4. The Suit was resisted by the revisionists through a joint written statement denying the relationship of landlord and tenant between the parties and also denying the title of the plaintiff respondent in the disputed property and setting up the title of third parson Bhikhabhai Bhurabhai. It was also alleged by them that the rent was paid to Bhikhabhai Bhurabhai who was the landlord.

5. The trial Court on the pleading of the parties framed issues. Subsequently issue No.3(A) was added on the application of the revisionists. On 31.1.1979 the trial Court found that the Suit was pre-mature and it was dismissed on the basis of findings recorded on Issue No.3(A). Appeal No.50 of 1979 was filed against that judgment and decree which was allowed on 16.3.1981 and after setting aside the judgment and decree of the trial Court the Suit was remanded to the trial Court for disposal in accordance with law. Thereafter the Suit was tried and the trial Court came to the conclusion that the plaintiff respondent was landlord and that the tenants were in arrears of rent for more than six months which

they were neither ready nor willing to pay and it was also not paid after service of notice under Sec.12(2) of the Bombay Rent Act. The Trial Court also found that the revisionist No.2, who was defendant No.2 in the trial Court was the successor tenant within the meaning of Section 5(11)(c) of the Bombay Rent Act and as such the Decree for arrears of rent and eviction was passed against the revisionists. Feeling aggrieved the revisionists preferred Appeal in the lower Appellate Court. The lower Appellate Court agreed with the findings of the trial Court and dismissed the Appeal, hence this revision.

6. At the out-set it may be mentioned that concurrent findings of fact recorded by the two courts below cannot be interfered in revision inasmuch as those findings of fact are based on proper appreciation of law and evidence on record. So far as legal issues are concerned the findings are again in accordance with law. As such interference in revision is hardly justified. In order to satisfy whether the finding of facts and law recorded by the trial Court are correct or not, I have gone through the Judgments of the two Courts below.

7. So far as the controversy regarding denial of relationship of landlord and tenant between the parties is concerned it is imaginary and the two courts below correctly recorded the finding on the basis of Sale Deed Exh.25 whose copy was also given to the revisionist on demand by the respondent and also from the fact that the rent was also paid by the defendant No.2 for six months from June, 1973 to December, 1973. It may also be mentioned that the plaintiff respondent deposed on oath that Ratilal, defendant No.2, paid rent to him personally for the aforesaid six months. This statement remained uncontroverted and unrebutted. No such plea was taken in the written statement that six months rent was not paid by the defendant No.2 to the plaintiff. Even the defendant No.1 Parghi did not dispute this fact in his statement on oath given in the trial Court. If in the written statement no stand was taken by the defendant that six months rent was not paid to the respondent and no evidence on this line was given by the revisionist it can be said that this payment of rent for six months would also create relationship of landlord and tenant between the parties. The question of payment of rent for six months is a question of fact and this question was answered by the two Courts below on proper appreciation of pleading and evidence on record, hence it requires no interference by this Court.

8. Likewise the question of denial of relationship

of landlord and tenant between the parties is also a question of fact which was correctly answered on the basis of evidence on record, hence no interference on this finding is required in this revision.

9. Once the relationship of landlord and tenant between the parties is established u/s. 116 of the Evidence Act the tenant or tenants are estopped from denying the title of the landlord. This is settled legal position. Thus, the stand of the defendant is not legally tenable on the point in view of Section 116 of the Evidence Act which has wrongly been mentioned as Section 115 of the Evidence Act by the Lower Appellate Court. However, this mistake of mentioning the correct section of the Indian Evidence Act is no ground for interference in revision. It may be merely a clerical or typographical error in the Judgment of the lower Appellate Court.

10. The two Courts below have likewise correctly recorded the finding that the defendant No.2 was successor tenant. The Appellate Court in the alternative has held that the defendants had nominated the defendant No.2 as successor tenant and in this way the defendant No.2 paid six months rent personally to the plaintif. Consequently this finding also requires no interference in this revision. The question of arrears of rent or payment of rent is again question of fact. In the plaint the respondent alleged that 36 months rent from January, 1974 to December, 1976 amounting to Rs.252/- was due which was not paid despite service of notice of demand. There is no plea of the revisionist that any amount was paid towards arrears of rent to the respondent after service of notice of demand under Section 12(2) of the Rent Act. As such the case was fully covered by Section 12(3)(a) of the Bombay Rent Act. The defendants did not take any plea that there was dispute regarding the standard rent. Consequently the decree for eviction could be passed under Sec. 12(3)(a) of the Rent Act. The Decree for arrears of rent also could be passed by the two Courts below.

11. The Appellate Court has, however, in the alternative proceeded to examine the applicability of Section 12(3)(b) of the Act to the facts of the case and the alternative findings of the Appellate Court are that out of the outstanding arrears of rent amounting to Rs.385/- nothing was deposited by the revisionist on the first day of hearing on which the issues were settled. This amount was to be deposited on or before 11.8.1978. In the second stage, namely, during pendency of the Suit the defendants were required to deposit Rs.735/- as

arrears of rent. The Trial Court decided the Suit on 21.8.1982. This amount was not deposited before delivery of Judgment by the trial Court. As against this, they have deposited only Rs.350/- on 8.2.1982. As such in the trial Court conditions for applicability of Section 12(3)(b) of the Act were not fulfilled by the revisionists. Even during the pendency of the Appeal entire amount was not deposited. The lower Appellate Court found that only Rs.80/- were deposited as arrears of rent from January, 1974. In this way the conditions attracting the applicability of Section 12(3)(b) of the Rent Act were not fulfilled by the revisionists. Hence they are not entitled to protection under this Section. Thus, alternative finding, though not required to be given in the instant case, was also correctly recorded by the Lower Appellate Court. This suffers from no manifest error of law. If in these circumstances the Appellate Court confirmed the Judgment and Decree of the trial Court, it committed no manifest error of law. Hence, there is no merit in this revision, which is liable to be dismissed.

The revision is, therefore, dismissed. No order as to costs.

sd/-

Date : February 11, 2000 (D. C. Srivastava, J.)

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